IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2198 OF 2004

Kasim Kadar Kunhi, age 27 yrs.)
an Indian Inhabitant residing)
at Mading Bldg. Compound,)
No.3, R.No.39, (B), Musaphir)
Khana, Mumbai 400 001.)... Petitioner
(Friend of detenu)

Versus

1. The State of Maharashtra)
through the Secretary to)
the Government of Maharashtra)

2. Ranjana Sinha, Secretary)
(Preventive Detention))
Government of Maharashtra,)
Home Department and Detaining)
Authority.)

3. The Superintendent of Prison)
Nasik Road, Central Prison,)

Nasik.)

4. The Superintendent of Mumbai)
Central Prision, Mumbai.)...Respondents

Mrs.A.M.Z.Ansari for petitioner
Mr.D.S.Mhaispurkar, APP for respondents

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATE : 2ND FEBRUARY, 2005.

ORAL JUDGMENT : (Per Khandeparkar, J.)

. The Petitioner challenges the Order of Detention issued on 28.2.2002 by the Respondent No.2 in exercise of the powers under Section 3(1) of the Conservation of Foreign Exchange and Preventive of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA Act) on three grounds viz. (i) delay in execution of the detention order (ii) delay in consideration of representation and (iii) the order issued for the

purpose referred therein could not have been issued on the basis of the materials placed before the Detaining Authority.

2. The petitioner is the friend of one Mohd. Kunhi Kallattra - detenu. On suspicion, the detenu was intercepted on 6.9.2001 while he had boarded the Gulf Air Flight No.-059 to travel to Dubai, and examination of his baggage and personal search resulted in recovery of Indian Currency worth Rs.14,650/= and Foreign Currency equivalent to Rs.6,94,500/=, besides, travelers cheques totally worth Rs.12,87,252/= and the same were seized under Panchanama and he was arrested by the Custom Authorities. The foreign currency worth Rs.3,16,505/= is stated to have concealed in the bag, which was carried by the detenu and there was no declaration made in relation to the said foreign currency by the detenu before the Customs Authorities before boarding the air craft. The arrest of the detenu was followed by the investigation, which included the recording of his statement under Section 108 of the Customs Act, 1962, followed by retraction of statement and thereafter by Order dated 28.2.2002. The Detaining Authority issued the said impugned Detention Order and

the same was served upon the detenu along with the grounds in support thereto on 21.9.2004. It is also to be noted that pursuant to the arrest of the detenu, an application for bail came to be filed before the concerned Magistrate, which was allowed on 18.9.2001 and the detenu was released on bail on 29.10.2001.

3. As regards the first ground of challenge it is the contention of the detenu that the impugned Order was belatedly served upon the detenu i.e. nearly two years and seven months from the date of issuance of the said Order and there is no satisfactory explanation for such delay in giving effect to the said Order. It is the contention on behalf of the detenu that inspite of receipt of the letter dated 2.9.2003 sent by the Advocate for the detenu informing the Customs Authorities about the non service of any Show Cause Notice under Section 124 of the Customs Act, 1961 regarding the seizure of the currency from him, there was no response to the said letter nor even intimation about the issuance of detention order against the detenu. It is further contention that the detenu himself had presented before the learned Magistrate dealing with the complaint filed by the Customs

Authority under Section 135 of the Customs Act and inspite of having appeared as many as on five occasions before the learned Magistrate no efforts were made to serve the Detention Order and there is no explanation for such failure. It is the contention of the detenu that in the facts and circumstances of the case, the belated service of the impugned order of the detention on the detenu has impaired the satisfaction arrived at by the detaining authority, as the same is not genuine and it renders the order to be null and void and therefore, deserves to be quashed. The reliance is placed in the decision in the matter of **K.P.M.Basheer vs. State of Karnataka and Anr. reported in (1992) 2 Supreme Court Cases 295** and in the matter of **Narendra Punjabhai Shah vs. Union of India and Ors. reported in 1994(2) Scale page 112**. It is also been brought to the notice of the court that in the statement of detenu recorded under Section 108 of the Customs Act the detenu had clearly disclosed his local address in Mumbai and yet no efforts were made to serve the order of detention at Mumbai and there is no explanation for the same by the respondents. Even the action under section 7(1) of the COFEPOSA Act has been taken after five and half months and there is no explanation for such delay.

4. The learned A.P.P. on the other hand has submitted that the precaution was taken for issuance of the order to be served upon the detenu at Kerala after verifying the address of the detenu from the Sponsoring Authority and it was therefore sent to Kerala. Besides, even the notice issued by the Customs Authorities under Section 124 of the Customs Act almost during the same time when the Order was issued had returned unserved with the postal remarks "Left". He has further submitted that it is also not the case of the detenu either in the Petition or otherwise that the detenu was staying at Mumbai during the relevant time. Besides, in an application filed by the detenu before the Magistrate on 30.12.2001 he had disclosed his address of Kerala and it was not revealed that he had been residing at Mumbai at that time. As far as action under Section 7(1) of the COFEPOSA Act is concerned the same was taken after receipt of inability of the Kerala Police to execute the detention order on account of non availability of the detenu at Kerala and therefore, there was no delay as such in taking the action under Section 7(1) of the COFEPOSA Act. Even otherwise, according to the learned APP, the detenu himself having avoided the service of

detention order by absconding himself, he cannot be allowed to take benefit of his own wrong to defeat the detention order. The reliance is sought to be placed in the matter of **Shaikh Mohammad Saeed Karamatullah vs. State of Maharashtra & Ors. reported in 2004 ALL MR (Cri) 654**, in the matter of **Smt. Poonam Rajeev Pathak vs. Union of India and Ors. reported in 2002 ALL MR (Cri.) 2182** and unreported decision in the matter of **Bapu Shantaram Satam vs. The Union of India and Ors. in Criminal Writ Petition No.1909 of 2003 delivered on 29th June, 2004** while contending that a detenu who avoids the service of detention order by absconding himself cannot be allowed to take benefit of such a situation created by himself to defeat the detention order.

5. The impugned Order was undoubtedly issued on 28.2.2002 and it was served upon the detenu on 21.9.2004 nearly two years and seven months after the issuance of the order. However, mere delay in giving effect to the order of detention by itself cannot be a justification for quashing of the detention order. In such a case, it is necessary to see whether the authorities have furnished satisfactory explanation for such delay. The

respondents in their affidavits have stated that immediately after the issuance of the detention order the same was sent for its execution to the Government of Kerala vide letter dated 20.2.2000 at the place of the ordinary residence of the detenu in the State of Kerala and at the address mentioned in that detention order. The Government of Kerala by letter dated 7.3.2002 had forwarded the said order for execution to the Superintendent of Police, Kasargod. The Superintendent of Police at Kasargod had acknowledged the receipt of the detention order by letter dated 25.3.2002. Thereafter, no intimation was received regarding the execution of the detention order. Therefore, a wireless message was sent to the Superintendent of Kasargod on 14.5.2002 and simultaneously the local address of the detenu was also ascertained, and the papers were called back and on receipt of the papers on 10.6.2002 pursuant to letter dated 4.6.2002 from the Superintendent of Police, Kasargod, Kerala, the efforts were made to serve the detention order in Mumbai, however, without any success and under Report dated 8.7.2002, it was revealed that the detenu had left the premises where he was residing for few months in Mumbai. Despite the efforts to ascertain the whereabouts of the detenu as he could

not be traced, an order as contemplated under Section 7(1)(b) of COFEPOSA Act was issued on 18.7.2002 followed by Order dated 17.8.2002 under section 7(1)(a) of the said Act. Inspite of the action being taken under Section 7(1) of COFEPOSA Act the order remained to be executed for considerable time as the detenu was absconding. Thereafter the detenu surrendered before the Metropolitan Magistrate, 3rd Court, Mumbai, and an intimation thereof was received by the Government on 15.9.2004. The detention order was then given effect to by executing the same on 21.9.2004. It is the case of the respondents that all these time the detenu himself was absconding and was deliberately avoiding the execution of the detention order.

6. The above explanation given by the respondents regarding the delay in giving effect to the detention order apparently discloses that the respondents did make efforts to execute the said detention order at the place of ordinary residence of the detenu in Kerala immediately after issuance of the order. Undoubtedly the statement recorded under section 108 of the Customs Act of the detenu by the Customs Authorities on 6.9.2001 disclosed the permanent address of the detenu to be at

Kerala and the detention order was issued on the same address and was also sent to be executed at the same place. The materials on record also reveal that the said statement the detenu undoubtedly disclosed that for few months prior to the date of the arrest he had been staying at Mumbai and he had disclosed his temporary address at Mumbai. At the same time the notice sent to the detenu by the Customs Authorities under Section 124 of the Customs Act in the first week of March 2002 was returned with the postal remark "Left", and further the report dated 8.7.2002 from the PCB CID revealed that the detenu, after having resided in the said premises in Mumbai for about 2/3 months, had left the said premises. Considering these facts the issuance of the order for service thereof at Kerala in February 2002 cannot be found faulted with. Further the explanation given in the affidavit in reply also reveals that the efforts were made to execute the Order in Kerala but without any success, an intimation regarding non-availability of the detenu at Kerala was received 14.5.2002 and thereafter the papers were recalled and efforts were made to serve the order in Mumbai. However, pursuant to the Report dated 8.7.2002, it was revealed that his whereabouts at Mumbai also were not known. Obviously, the action under

Section 7 of the COFEPOSA Act was taken, however, the detenu could not be apprehended till September, 2004, for all this time he was absconding.

7. It is sought to be contended that the detenu had been attending the hearing of the case under the Customs Act before the Metropolitan Magistrate, Mumbai and as many as five occasions he had appeared before the said Court during the relevant period. In that connection attention is sought to be drawn to the copy of the Roznama, at Annexure-D to the Petition, which disclose entries relating to the dates of 16.4.2004, 15.4.2004, 3.8.2004, 11.8.2004 and 25.8.2004. Perusal of the said copy it is apparent that on 16.4.2004, 17.6.2004 and 8.7.2004 the detenu, who is the accused No.1, had not appeared before the Court. Referring to the expression "A.No.1 for making his presence" appearing in the Roznama dated 8.7.2004, it was sought to be contended that the same reveals appearance of the detenu before the Magistrate. It is to be noted that the said expression is preceded by the words "case is taken on board on an application made by" and thereafter the expression "A.No.1 for making his presence" appears. Obviously, it was not a case fixed for hearing on the

said day but it was taken up on board pursuant to the application filed by the detenu. It nowhere records the presence of the detenu before the court on the said day. The fact that the matter was not fixed for hearing before the Magistrate on 8.7.2004, is also revealed from the Roznama dated 17.6.2004 wherein it is recorded that the matter was adjourned to 3.8.2004. Undoubtedly the entries relating to the dates of 3.8.2004, 11.8.2004 and 25.8.2004 disclose presence of the accused before the Magistrate. At the same time the affidavit in reply also discloses that pursuant to the information received by the Government about the appearance of the accused before the Magistrate in August 2004, the authorities took necessary steps to serve the detention order and it was accordingly served on 21.9.2004. Being so, the contention that the detenu had appeared as many as on five occasions before the Magistrate during the relevant period is incorrect and totally devoid of substance. In fact Roznama entry dated 8.7.2004 itself discloses that the matter was taken up on board in order to direct the appearance of the detenu on the next date of hearing and which apparently discloses that prior to the said date the detenu had not appeared before the said Court. In fact only the entry dated 6.4.2004 discloses the

appearance of the detenu before the said Court. No other entry for the relevant time, in relation to the Roznama pertaining to the criminal case under the Customs Act has been disclosed to be referring to the appearance of the detenu before the learned Magistrate. Being so, the contention about the appearance of the detenu prior to August, 2004 before the learned Magistrate is totally devoid of substance.

8. Attention was drawn to the advocate's notice on behalf of the detenu making grievance about the non receipt of the show cause notice and failure on the part of the authorities even to reply to the same and to inform about the detention order. Undoubtedly the said notice was issued on 2.9.2003. However, it is nowhere the case of the detenu that in the said advocate's letter the advocate for the detenu had informed the authorities about the whereabouts of the detenu. It is sought to be argued that the authorities could have atleast informed the advocate for the detenu that the presence of the detenu was required for service of the detention order. The said contention is totally devoid of substance. Clause (b) of Section 7(1) of COFEPOSA Act provides that "if the appropriate Government has

reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, the Government may by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction, he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extent to one year or with fine or with both." Obviously, once the action under Section 7(1)(b) is initiated, the burden will lie upon the detenu to establish that it was not possible for him to comply with the direction issued under the said provisions of law for his appearance. Once it is the case of the detenu himself that a notice by the advocate of the detenu was issued to authorities complaining about the non receipt of the show cause notice under Section 124 of the Customs Act and there being presumption about the knowledge to the detenu of the

detention order in view of direction under Section 7(1)(b) having been published in Official Gazette, it was necessary for the detenu himself to disclose the reason for not being possible for him to appear before the authority and his whereabouts and having failed to do so, the detenu cannot take benefit of his own wrong. Being so, mere failure on the part of the authorities to inform to his advocate about the necessity of presence of the detenu to serve the order cannot enure to the benefit that the detenu who was apparently shown to be absconding at the relevant time. Besides, admittedly the advocate's notice was in relation to the grievance pertaining to the non receipt of the show cause notice under Section 124 of the Customs Act. Merely because the authorities dealing with adjudication proceeding under the Customs Act had not informed about the requirement of the detenu for the purpose of service of the detention order, it cannot be said that there is unexplained delay in giving effect to the detention order.

9. As regards the decision in the matter of K.P.M.Basheer's case (supra) it was a case where the arresting officer did not make any real and genuine

efforts to arrest and detain the detenu, and the explanation, which was sought to be offered that the detenu was fugitive, eluding the dragnet of the detention order, was found to be unacceptable, since during the relevant period the detenu had appeared before the Asstt. Collector of Customs, Mumbai on two occasions and the same was after the date of issuance of the detention order. In those circumstances the Apex Court held that the order of detention was not sustainable since the live and proximate link between the grounds of detention and the purpose of detention had snapped. Apparently the decision is clearly distinguishable on facts.

10. In **Narendra Punjabhai Shah's** case (supra) the explanation which was sought to be given for delay of one year in serving the detention order was that though in a criminal case the detenu was the accused and had appeared before the Court on 23.3.1992 and also on 7.10.1992, yet the detention order could not be served as the authorities were busy in translating voluminous documents which were in Gujarati to English and then the efforts to serve the order did not yield result as they could not find the detenu and therefore, they moved for

cancellation of bail and the detenu did not appear on the dates on which the application was posted for hearing and, therefore, the detenu was absconding. That was the explanation with reference to the period upto 11.12.1992 and thereafter it is stated that a team of officers of sponsoring authority made an enquiry on 6.4.1993 but then the detenu was not available and finally the detenu surrendered after expiry of one year. Obviously, the explanation was rejected being vague and unsatisfactory. That is not the case in the matter in hand. It was a specific case of the respondents in the matter in hand that the detenu was continuously absconding and the records apparently disclose that the detenu after his release on bail, appeared before the Learned Magistrate for the first time on 3.8.2004. He was released on bail on 29.10.2001 much prior to issuance of the order of detention. The detenu has not been able to disclose that the detenu was available in Mumbai or in Kerala during the relevant period, and the same coupled with the efforts on the part of the respondents to serve the detention order discloses his non availability in Mumbai as well as in Kerala and the fact that he was absconding during the said period.

11. The Division Bench of this Court in Shaikh Mohammad Saeed Karamatullah's case (supra) while dealing with the issue relating to delay in giving effect to the service to the detention order and after taking note of the decision of the Apex Court in **T.A.Abdul Rehman vs. State of Kerala reported in AIR 1990 SC 225** as well as **Pradeep Nilkanth Paturkar vs. S. Ramamurthi, reported in AIR 1994 SC 656** has clearly held that the Court has to ascertain whether the detaining authority had satisfactorily examined such a delay and afforded the tenable and reasonable explanations. Considering the facts stated above and the explanation given by the respondents for inability to give effect to the detention order dated 28.2.2002 till 21.9.2004, certainly the same discloses the detaining authority having satisfactorily examined the delay and has forwarded satisfactoriy explanation for such delay and therefore, the contention on behalf of the detenu that the delay has rendered the detention order to be null and void is to be rejected. The view that we are taking is also fortified by the decision of the another bench of this Court in the matter of **Smt.Poonam Rajeev Pathak's** case, therein it was clearly ruled that "most important aspect to be considered in case of delay is

concerned is whether the live link between the activities of the detenu and the detention order is snapped on account of alleged delay." Apart from binding nature of the said observation we have no hesitation in expressing our respectful agreement with the said ruling. In the case in hand the materials on record nowhere disclose snapping of live link between the activities of the detenu and the detention order. The very fact that the detenu was not available and absconding for a period of more than two years from the order of issuance of the detention, coupled with the explanation for the delay on that count in giving effect to the order, failure on the part of the detenu to appear before the authority inspite of action being initiated under Section 7 of the COFEPOSA Act, notice of the detenu's advocate in September, 2003 enquiring about the show cause notice under Section 124 of the Customs Act, non appearance of the detenu in a criminal case before the Magistrate till August 2004, all these facts taken together clearly support the explanation as submitted on behalf of the respondents for delay in executing the detention order.

12. The second ground of challenge to the detention

order relates to delay in considering the representations made by the detenu. It is the contention of the detenu that the detenu had submitted nine copies of representation, jointly addressed to the Detaining Authority, State Government and Central Government and the Advisory Board, however, the reply filed by the Respondents discloses that the State Government did not consider the representation till the decision by the detaining authority and consequently there was considerable unexplained delay while processing the representation by the State Government. Referring to the affidavit in reply filed on behalf of the State Government it was submitted by the learned advocate for the detenu that the said affidavit clearly discloses that the Opinion of the Advisory Board dated 19.11.2004 was received by the Home Department on 20.11.2004. At the same time it discloses that the Addl. Chief Secretary rejected the representation on 25.11.2004. Considering the fact that the representation was dated 2.11.2004, the contention of the learned advocate for the detenu is that there is no satisfactory explanation for such delay in considering the representation. The learned advocate for the respondents on the other hand referring to the affidavit

filed by the Commissioner of Customs has submitted that pursuant to the representation dated 2.11.2004 the comments of Sponsoring Authority by letter dated 5.11.2004 were called for and the said letter was received by the said authority on 9.11.2004 and parawise comments were submitted on 17.11.2004. He has also brought to our notice that the 6th and 7th of November, 2004 being Saturday and Sunday were non working days for the Customs and from 10th to 13th November 2004 there were Diwali Holidays followed by 14th and 15th being Sunday and Ramzan-Id holiday respectively. Considering the same it is sought to be contended that there was no delay as such and the period taken for disposing of the representation has been well explained. It is also the contention on behalf of the respondents that the Government has independently considered the representation without being in any manner influenced by the observations by the other authorities to whom it was submitted and considered. In that regard attention is also drawn to the affidavit of Shri J.N.Patil, Under Secretary to Government of Maharashtra, to the effect that the files relevant to the case of the detenu were in possession of the Detaining Authority till 23rd November, 2004, and therefore, the representation could

be disposed of by the Government only thereafter.

13. The learned advocate for the petitioner however, placing reliance in the decision in the matter of **Mahesh Kumar Chauhan @ Banti vs. Union of India and Ors. reported in (199)) 3 Supreme Court Cases 148** and in the matter of **Mrs. Venmathi Selvam vs. State of Tamil Nadu and Anr. reported in JT 1997 (2) SC 393**, has submitted that the so called explanation cannot be said to be a satisfactory explanation and irrespective of whether the delay is long or short, if it remains unexplained, it is fatal and therefore, the impugned order is liable to be quashed. Attention is also drawn to the decision of the unreported judgment of this Court in the matter of **Smt. Smita Sandeep Shirke vs. The State of Maharashtra in Criminal Writ Petition No.1343 of 2004 delivered on 20th October, 2004**. The learned APP on the other hand has placed reliance in the decision of the Apex Court in the matter of **Union of India and Anr. vs. Sneha Khemka and Anr. reported in 2004 Cri. L.J. 941** while contending that the requirement of Article 22(5) of the Constitution of India is that the representation should be disposed of within reasonable time and the materials on record reveal that there is due compliance of the

said requirement.

14. In **Smt.Smita Sandeep Shirke’**s case (supra) the Division Bench the detenu had forwarded his representation on 10.7.2004 and it was rejected on 7.8.2004, which was communicated to the detenu on 13.8.2004. Referring to the unsatisfactory explanation given on behalf of the Government and as there was delay at every stage without satisfactory explanation and further that there was absolutely no explanation for the period from 14.7.2004 till 22.7.2004, it has held that the failure on the part of the authority to satisfactorily explain the delay was fatal to the continued detention of the detenu.

15. In **Mahesh Kumar Chauhan’**s case (supra) it was found that the authorities were unable to give any explanation for the period between 25.8.1989 to 11.9.1989, except stating that the representation received from the detenu was forwarded to the concerned Sponsoring Authority on 21.8.1989 and the same was received by the department on 11.9.1989 and those circumstances, it was observed that there was undue as well as unexplained delay which amounted to violation of

the provisions of Article 22(5) of the Constitution of India rendering the detention order to be invalid.

16. In **Mrs.Venmathi Selvam’**s case (supra) the Apex Court has ruled that though the delay was not long it had remained unexplained. That was a case wherein representation dated 7.10.1997 was received on 14.10.1997. The representation was rejected by the Government on 10.11.1997. The Government was required to explain as to how it dealt with the representation between 15.10.1997 and 10.11.1997, except stating that the remarks were called from the Detaining Authority on 17.10.1997, there was no explanation whatsoever, even after specific opportunity being given by the Court to the Respondents to file the affidavit. Inspite of opportunity being given and as the same was not availed of, nor any explanation was submitted by the Government in those circumstances, the detention was held to be bad in law.

17. It is to be noted that the above referred decisions clearly hold that in case of delay in disposal of the representation, it is incumbent upon the authorities to explain the delay and any failure in that

regard can render the detention order to be bad in law. However, at the same time, the Apex Court in the recent decision in the matter of **Union of India and Ors. vs. Sneha Khemka's** case (supra) has ruled that "a representation of the detenu having regard to the clause 5 of Article 22 of the Constitution of India must also be disposed of within reasonable time". It is therefore needless to say that right to make representation being the fundamental right assured to the detenu under Article 22(5) of the Constitution of India and bearing in mind the object and purpose of the representation by the detenu, it is necessary for the authorities to deal with such representation within reasonable time and to communicate the decision thereon to the detenu at earliest possible. For reason whatsoever, if there is any delay in disposal of such representation, it is necessary for the authorities to furnish satisfactory explanation for such delay. In the case in hand considering the time consumed for disposal of the representation, bearing in mind the intervening holidays and non working days as explained by the respondents and revealed from the materials on record certainly, the respondents cannot be accused of having failed to discharge their obligation in that regard. In the facts

and circumstances of the case, the representation was disposed of within reasonable time. Besides, the material files relating to the detenu were for some time with one of the authorities and undoubtedly the said authority could not have disposed of the representation without perusal of the said records, so also the State Government could not have disposed of the said representation as the said records were with another authority, therefore, the State Government could not be blamed of having delayed the disposal of the representation.

18. The contention about the decision of the Government might have been influenced by the decision of the another authority is also without any substance. No conclusion in that regard can be drawn without any basis. Apart from mere making submission in that regard no materials have been referred to in support of such submission. The very fact that the relevant files were in possession of the different department at the relevant time, itself would disclose the justification for the decision by the Government subsequent to the decision by the said authority. There is no record which can even remotely suggest that the decision of the

Government was influenced by the decision of the said authority.

19. The third and the last ground of challenge is that considering the materials placed before the detaining authority, same would reveal acts of smuggling on the part of the detenu, as there was no case for issuance of the order on the ground that the activities of the detenu were prejudicial to the augmentation of the foreign exchange. It is the contention of the detenu that there was no material placed before the detaining authority sufficient to arrive at the conclusion that the activities of the detenu were in any manner prejudicial to the augmentation of the foreign exchange and therefore, the impugned order is bad in law. The respondents on the other hand have submitted that the detenu was intercepted on 6.9.2001 while he was travelling to Dubai by Gulf Air Flight No.-059 and on personal search of detenu and examination of his baggage he was found to have foreign and Indian Currency of the value worth of Rs.12,87,252/= including travellers cheques and the detenu could not establish the source from whom he had received the foreign currency nor he had declared to the same to the Customs Authorities and

therefore he was in illegal possession of the same and the said currency was liable to be seized and accordingly seized. It is further case of the Respondents that the detenu is not NRI and therefore, was supposed to deposit 3000/= out of 5000 US # within a period of 10 days from the date of receipt of the said currency in his possession and having not done so, activity of the detenu was detrimental to the augmentation of the foreign exchange. Attention was drawn to the dictionary meaning of the word "augment" which means "to make greater, more numerous, larger" and it was contended that the activity of the detenu could not be said to lead to be detrimental to augmentation of the foreign exchange merely because he is said to have carried the foreign currency while going abroad and that it could be an attempt to smuggle the currency out of India. Once it is apparent that the detenu was in possession of the foreign currency beyond the limit which he could and there was no explanation for the same, nor he did disclose the same and yet he carried the same while going abroad, certainly it amounts to attempt to drain out the foreign exchange from the country and to that extent it would be detrimental and prejudicial to the augmentation of the foreign exchange

in the country.

20. Apart from mere submission that such an activity would not amount to detrimental to foreign exchange, no further elaboration has made in that regard by the learned advocate for the Petitioner. Considering the materials on record and case putforth by the respondents in reply to the said contention, certainly the subjective satisfaction for the detention of the detenu cannot be said to be without application of mind and therefore, it does not warrant interference in the impugned order on the alleged ground.

21. As no other ground is canvased against the impugned order there is no case to interference in the impugned order, and therefore, the petition is dismissed. Rule is discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J.)

(P.V.KAKADE, J.)

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